TAI CHOI YU

v.

SYARIKAT TINGAN LUMBER SDN BHD

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
SITI NORMA YAAKOB JCA
DENIS ONG JCA
[CIVIL APPEAL NO: Q-02-237-97]
3 SEPTEMBER 1998

CIVIL PROCEDURE: *Parties - Intervention - Application to intervene - Prerequisites - Whether must be made before final judgment entered - Whether must show legal interest in subject matter of action - Order 15 r. 6(2) & (3) Rules of the High Court 1980 - Applicability*

The appellant, a minority shareholder in NTT, applied to intervene in a suit involving the respondent and NTT pursuant to O. 15 r. 6(2) & (3) Rules of the High Court 1980 ('RHC'). The appellant had proceeded with the application to intervene, notwithstanding that the majority shareholders in NTT, on account of NTT's insolvency, had resolved to admit the respondent's claim and not to contest the action. It was also evident that the application to intervene was made after a default judgment against NTT had been obtained, and had indeed been finalised by the respondent. The court below refused to exercise its discretion in favour of the appellant and dismissed the application. The appellant appealed.

Held:
Per Shaik Daud Ismail JCA

[1] The decision appealed against in this case was made in the exercise of the discretion of the court. Such an exercise of discretion is rarely interfered with on appeal.

[2] Although O. 15 r. 6(2) RHC states that an application to intervene may be made "at any stage of the proceedings", this does not mean that such an application can be made after final judgment has been entered. The default judgment in this case had been perfected and was in fact a final judgment. That being so, the court ought to refuse to exercise its discretion under O. 15 r. 6(2) RHC.

[3] Before the court can grant leave to intervene, the applicant must show that he has an interest directly related to the subject matter of the action. Interest means legal interest and not a mere commercial interest. A mere commercial interest in the outcome of the action is not sufficient.

[3a] The appellant had not shown that he had any legal interest to interfere in the proceedings. Aside from the fact that NTT has resolved to admit the debt and had refused to take further steps to defend the respondent's action, a mere shareholder, a *fortiori* a minority shareholder like the appellant, clearly had no legal or equitable interest in the property of the company. The High Court was right in not exercising its discretion to grant leave to the appellant to intervene.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu, yang merupakan pemegang saham minoriti dalam NTT, memohon untuk mencelah dalam tindakan yang melibatkan responden dan NTT berlandaskan peruntukan A. 15 k. 6(2) & (3) Kaedah-kaedah Mahkamah Tinggi 1980 ('KMT'). Perayu telah meneruskan dengan prosiding untuk mencelahnya, walaupun pemegang-pemegang saham majoriti NTT, berdasarkan ketaksolvenan NTT, telah memutuskan untuk mengakui tuntutan responden serta tidak menentangnya. Selain itu, ianya juga nyata bahawa permohonan untuk mencelah tersebut telah dibuat selepas suatu penghakiman ingkar yang muktamad telah diperolehi oleh responden terhadap NTT. Mahkamah di bawah enggan untuk melaksanakan budibicaranya yang berpihak kepada perayu, dan dalam halkeadaan yang wujud telah menolak permohanan. Perayu dengan itu merayu.

Diputuskan:
Oleh Shaik Daud Ismail HMR

[1] Keputusan yang dirayui di sini dibuat melalui pelaksanaan budibicara mahkamah. Pelaksanaan budibicara sedemikian amat jarang diganggui sewaktu rayuan.

[2] Walaupun A. 15 k. 6(2) KMT menyatakan bahawa sesuatu permohonan untuk mencelah boleh dibuat "at any stage of the proceedings" ini tidak bermakna bahawa permohonan sedemikian boleh dibuat selepas sesuatu penghakiman itu menjadi muktamad. Penghakiman ingkar di sini telah disempurnakan dan ianya merupakan suatu penghakiman muktamad. Atas alasan tersebut, mahkamah sepatutnyalah menolak untuk melaksanakan budibicaranya di bawah A. 15 k. 6(2) KMT.

[3] Sebelum mahkamah memberi kebenaran untuk mencelah, pemohon harus menunjukkan bahawa beliau mempunyai kepentingan yang berkait secara langsung dengan subject-matter tindakan. Kepentingan di sini bermaksud kepentingan undang-undang dan bukan hanya kepentingan komersial. Kepentingan komersial semata-mata dalam keputusan tindakan adalah tidak memadai.

[3a] Perayu tidak menunjukkan bahawa beliau mempunyai apa-apa kepentingan undang-undang untuk mencelah dalam prosiding. Selain dari fakta bahawa NTT telah membuat resolusi untuk mengakui hutang berkenaan dan enggan untuk menentang tindakan responden, seorang pemegang saham, apalagi seorang pemegang saham minoriti seperti perayu, jelas tidak mempunyai kepentingan legal atau equitable dalam harta sesebuah syarikat. Mahkamah Tinggi adalah betul bilamana tidak melaksanakan budibicara bagi memberi kebenaran kepada perayu untuk mencelah.

[Rayuan ditolak.]

Cases referred to:
Eh Riyid v. Eh Tek [1976] 1 MLJ 262 ***(refd)***
Lee Meow Lim v. Lee Meow Nyin [1990] 3 MLJ 123 ***(foll)***
Macaura v. Northern Assurance Co Ltd & Others [1925] AC 619 ***(refd)***
Ratnam v. Cumarasamy & Anor [1965] 31 MLJ 228 ***(refd)***
Sanders Lead Co Inc v. Entores Metal Brokers Ltd [1984] 1 WLR 452 ***(foll)***
Shell Malaysia Trading Sdn Bhd v. Leong Yuet Yeng & Ors [1990] 3 MLJ 254 ***(foll)***
Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd [1989] 1 CLJ 1128 ***(foll)***
United Asian Bank Bhd v. Personal Representative of Roshammah (deceased) & Ors [1994] 3 CLJ 681 ***(refd)***
Vasudevan v. T Damodaran & Anor [1981] 1 CLJ 84 ***(refd)***
Wee Tiang Kheng & Ors v. Ngu Nii Soon & Ors [1989] 1 CLJ 267 ***(foll)***

Legislation referred to:
Companies Act 1965, s. 218(1)(a)
Rules of the High Court 1980, O. 15 r. 6(2) & (3)

For the appellant - Tai Choi Yu; M/s Tai Choi Yu & Co
For the respondent - RR Sethu (Dominic Lai with him); M/s Dominic Lai & Co

[Appeal from High Court, Miri; Suit No: 22-03-95]

Reported by WA Sharif

JUDGMENT

Shaik Daud Ismail JCA:

This is an appeal from the decision of the Miri High Court which had on 4 November 1997, dismissed the appellant's summons in chambers to intervene in a suit filed by the respondent company Syarikat Tingan Lumber Sdn. Bhd. (STL) against a company known as New Tingan Timber Sdn. Bhd. (NTT).

The respondent had filed a suit and a statement of claim dated 28 June 1995, against NTT claiming a sum of RM721,197.60 due from NTT to STL on an account stated and contained in a confirmation request dated 23 March 1994. The amount claimed was the balance of the price of logs sold and delivered by STL to NTT and for moneys paid to NTT's creditors at the request of NTT.

When the matter came up in the Miri High Court on 3 February 1996, judgment in default of appearance was entered against NTT which was founded on the failure of NTT to appear and on the admission of the debt by NTT. Subsequently STL issued a statutory notice under s. 218(1)(a) of the Companies Act 1965, to wind up NTT as they could not pay their debts.

The appellant herein, a minority shareholder and a director of NTT, had, on 13 March 1996 received a copy of the statutory notice. He then called for a meeting of the Board of Directors of NTT which took place on 23 March 1996. The board by a majority resolved that no action be taken by the company to set aside the default judgment or to oppose the winding up proceedings, on the ground that there is no defence to the action and that NTT was insolvent. Having lost at the board meeting by the majority decision, the appellant turned to the court by filing the application for leave to intervene under O. 15 r. 6(2) & (3) of the Rules of the High Court 1980 (RHC).

The issue before the learned Judicial Commissioner was whether the appellant was entitled to intervene. First and foremost the decision appealed against was made in the exercise of the discretion of the court which discretion is rarely interfered with on appeal, based on the principle that the court had exercised its discretion judicially. In *Ratnam v. Cumarasamy & Anor*. [1965] 31 MLJ 228, the Privy Council held that it will not interfere with the discretion exercised by a lower court unless it is clearly satisfied that the discretion had been exercised on a wrong principle. Similarly the Federal Court in *Vasudevan v. T. Damodaran & Anor*. [1981] 2 MLJ 150, held that an exercise of discretion ought not to be interfered with unless there is satisfactory evidence that the judge was wrong because of the presumption that the judge has rightly exercised his discretion.

Next is, when should such an application be made. Although O. 15 r. 6(2) states that such an application could be made "at any stage of the proceedings" this does not mean that such an application can be made after final judgment had been entered. In *Shell Malaysia Trading Sdn. Bhd. v. Leong Yuet Yeng & Ors.* [1990] 3 MLJ 254, the court held that O. 15 r. 6 only applies to proceedings where the substitution of any of the parties to the cause or matter is made before final judgment. In that case the application was made after a default judgment had been finalised. See also *United Asian Bank Bhd. v. Personal Representative of Roshammah (deceased) and Ors.* [1994] 3 MLJ 327. A default judgment once perfected is a final judgment. See the case of *Wee Tiang Kheng & Ors. v. Ngu Nii Soon & Ors.* [1989] 1 MLJ 252, which held that a default judgment which had been perfected is a final judgment and the court there refused to exercise its discretion under O. 15 r. 6(2) of the RHC to remove the first plaintiff on the ground that he had no cause of action against the second and third defendants in the writ against whom judgment in default of defence had been entered and perfected.

In the present case, STL obtained the default judgment on 3 February 1996. The appellant took out the summons in chambers on 15 November 1996, by which time the judgment had been perfected and this is not denied by the appellant.

It is settled law that before the court grant leave to intervene, the applicant must show that he has an interest directly related to the subject matter of the action. Interest here means a legal interest not a mere commercial interest. Therefore a mere commercial interest in the outcome of the action is not sufficient. In *Sanders Lead Co. Inc. v. Entores Metal Brokers Ltd.* [1984] 1 WLR 452, Kerr LJ in the Court of Appeal held at p. 460 as follows:

> In my view the rule requires some interest in the would be intervene which is in some way directly related to the subject matter of the action. A mere commercial interest in its outcome, divorced from the subject matter of the action, is not enough.

This principle was applied in a number of Malaysian cases namely; *Tohtonku Sdn. Bhd. v. Superace (M) Sdn. Bhd.* [1989] 2 MLJ 298 and *Lee Meow Lim v. Lee Meow Nyin* [1990] 3 MLJ 123 and the Federal Court case of *Eh Riyid v. Eh Tek* [1976] 1 MLJ 262.

Under these circumstances has the appellant shown that he has a legal interest to interfere in the proceedings? Here the NTT themselves had admitted the debt and at a board meeting called for by the appellant himself, it was resolved by a majority that the company admit the debt and take no further step to either defend the action or oppose the winding up proceedings as they were

insolvent. The appellant in his affidavit avers that he was merely a minority shareholder of NTT. The law is clear that a mere shareholder, a *fortiori*, a minority shareholder has no interest, legal or equitable in the property of a company. (See *Macaura v. Northern Assurance Company Limited, and Others* [1925] AC 619 at 626).

For the aforesaid reasons, we are satisfied that the High Court was right in not exercising its discretion to grant leave to the appellant to intervene. The appellant's problems are with the Board of Directors of NTT and since these are internal matters of NTT they are best dealt with by NTT and not by the court. We see no reason to interfere and we dismissed the appeal with costs and ordered the deposit to be paid to respondent to account of their taxed costs.